

STATE OF IOWA
PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

In the Matter of Fact Finding	*	
Between	*	
	*	FINDINGS
PUBLIC PROFESSIONAL &	*	AND
MAINTENANCE EMPLOYEES	*	RECOMMENDATIONS
LOCAL 2003,	*	
INTERNATIONAL UNION OF	*	
PAINTERS & ALLIED TRADES	*	
	*	Anna DuVal Smith
and	*	Fact-Finder
	*	
JOHNSON COUNTY	*	Secondary Roads Department
BOARD OF SUPERVISORS	*	

Appearances

For the Public Professional & Maintenance Employees Local 2003:

Joe Rasmussen, Business Representative
PPME Local 2003
P. O. Box 69
Alburnett, IA 52202

For the Johnson County Board of Supervisors:

Judith Perkins
Labor/Employee Relations Consultant
1321 Coll Drive
Iowa City, IA 52246-4111

I. HEARING

This matter came for hearing at 10:00 a.m. on March 26, 2003, at the Johnson County Administration Building in Iowa City, Iowa before Anna DuVal Smith who was appointed Fact-Finder pursuant to Section 20.21 of the Iowa Public Employment Relations Act. Both parties were afforded a complete opportunity to examine witnesses, to present written evidence, and to argue their respective positions. Testifying on behalf of the Public Professional & Maintenance Employees Local 2003 ("Union") were Gary Tigges and Richard W. Bryant. Giving evidence for the Johnson County Board of Supervisors ("County") were Mike Gardner, Alan Miller, Kevin Hackathorn, Susan Vileta and Jen Feldmann. Also present for the County was Lora Shramek. The oral hearing concluded at 1:45 p.m. on March 26, 2003, whereupon the record was closed. In rendering these findings and recommendations, the Fact-Finder has given full consideration to all reliable information relevant to the impasse items and to the criteria specified for arbitrator consideration in Section 20.22 (9) of the Iowa Code, to wit:

- (a) Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- (b) Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- (c) The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
- (d) The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

II. BACKGROUND

With a 2000 population of 111,000, Johnson County is the fifth largest county in Iowa. Located in the "Technology Corridor" of the state and home to the University of Iowa, the county has experienced economic growth in recent years and presently has an assessed property valuation of \$3.8 billion (exclusive of Tax Increment Financing Districts which adds another \$2 billion to derive total property valuation). The County and Union compare themselves to five other counties in eastern Iowa: Black Hawk, Dubuque, Linn, Clinton and Scott. In terms of 2000 population, retail sales, personal income and FY 2001 net taxable valuation, Johnson

County ranks third or fourth of the six in the group. It has approximately 475 employees, 283 of which bargain collectively in six units. This Union represents three of these units, none of which had settled by the time of the hearing.

The dispute before this Fact-Finder concerns the Secondary Roads Department whose 37-38 full-time employees maintain 909 miles of roads organized into five districts. The nature of their jobs requires many of them to work nights, weekends and holidays because of weather conditions or road construction schedules. Employment is stable in this unit. More than 86 percent are at the top step of the wage structure. Mean longevity is 18.6 years. These employees have been bargaining with the County through their representative, PPME Local 2003, since 1975. Their current Agreement expires on June 30, 2003. The parties commenced bargaining a successor Agreement on September 19, 2002, but were unable to reach an accord on all issues so proceeded to fact-finding for the first time in their history. Position statements exchanged on March 18 contained seven issues: job posting, overtime compensation, uniforms, funeral leave, health insurance, wages, and grievance procedure. However, before the fact-finding hearing was convened, the County accepted the Union's proposal on health insurance and withdrew its proposal on uniforms, indicating it was filing a Negotiability Dispute request with PERB to remove all references to uniforms from the Agreement. Accordingly, five items are before the Fact-Finder: job posting, overtime compensation, funeral leave, wages, and grievance procedure.

III. IMPASSE ITEMS

Article 5 - Job Posting

Positions of the Parties

The Union proposes adding a paragraph giving preference to seniority in lateral transfers:

In job classifications which have assigned geographic districts, employees currently in that job classification may request a transfer from one district to a different district. The most senior employee's transfer request shall be granted before other employees are considered for vacancies in that job classification pursuant to the above bidding procedure.

The impetus for this proposal is the award of a District Patrol Person ("DPP") job in one of the satellite county sheds to the least senior bidder (who was in a different job classification) over the most senior bidder (who was already a DPP). The County's rationale at the time was that the least senior bidder was more qualified than the others. The parties have tried to work out their differences and have been to mediation, but the County continues to resist putting lateral transfer rights into the Agreement so the Union now looks to the Fact-Finder. The Union asserts that an employee already in a job classification has proven qualifications. Jobs within a classification do not vary from one part of the county to another. Therefore, seniority is the only legitimate basis for distributing work sites. To do otherwise suggests favoritism which breeds rancor within the bargaining unit. There are other interests as well, such as travel time and cost, and safety in getting to the report-in location in order to clear the roads of snow and ice.

The County opposes this addition, preferring current language. In so doing, the County relies on management rights to direct the work of its employees and to determine and implement methods, means, assignments and personnel. There is some variability in equipment from one district to another and employees are not created equal. Some employees are better skilled with a given piece of equipment than others. The County needs the flexibility to award positions to the most senior person with the needed knowledge, skills and abilities. For example, it is not efficient to have two individuals with bad backs in the same district. The County points out that employees help each other out and are given specific work assignments where needed, which will not necessarily be within their home district, although the home district is wherever they are report to pick up their equipment. The County does not assign someone to report to a shed forty miles distant from their home unless that employee has expressed an interest in it through the contractual procedure. The County asks the Fact-Finder to reject the Union's request for mandatory geographical transfers by seniority.

Findings and Recommendation

This is an issue with no direct financial impact on the County. There is also no argument or evidence of practices in the comparison counties. The parties rely entirely on their own history and arguments of efficiency and safety. Looking at efficiency and delivery of services, only ten employees work out of the seven sheds. The standard of service will therefore depend on the breadth of skills among the qualified employees assigned to each shed and the degree to which employees are assigned to work outside their report-in territory. The County therefore has a strong interest in deployment of specific skills, even though all employees are at least minimally qualified. Against this is the employee interest in minimizing commuting time and distance. This interest, however, is addressed in large measure by the employee's ability to bid on openings at preferred locations and not on those at inconvenient locations. In addition, if the employee disagrees with the County's assessment of relative qualifications, which is what happened in the sole case cited as evidence of a problem needing correction, the employee is not without recourse for he can challenge that assessment through the grievance procedure. The Fact-Finder accordingly recommends retention of current language for two reasons. First, there is no evidence of a senior employee being denied a transfer over a junior one since the case that inspired the new selection procedures. There does not therefore appear to be a current problem requiring a solution. Second, employer needs to distribute skills efficiently in the interest of public service outweigh employee interests which are already addressed by other means.

Article 7 - Working Hours(Overtime Compensation)

Positions of the Parties

The Union wishes to increase the amount of compensatory overtime employees may accumulate and use in a calendar year from 36 to 60 hours. The unit has had compensatory time since 1998. The initial provision was interpreted by the County to mean that the cap was the limit of what an employee could accumulate and use in a year. In other words, employees could not use accumulated compensatory time and then re-accumulate to the cap. The Union disagreed

with this interpretation but came to accept it. Now that the practice has been established, it wishes to improve the benefit to more closely approximate what the comparison counties' departments enjoy, which the Union calculates as averaging 96 hours including Johnson County. It points out that compensatory time saves the County money since it avoids cash payment of overtime. Unlike safety services and health care, employees are not replaced when absent and there is no history of abuse. The Engineer has the ability to schedule the use of compensatory time so there is no impact on service.

The County opposes increasing this benefit saying statistics show the unit does not use what it has now. Current balances show only 28 percent carry the maximum 36 hours. There is no compelling reason to increase the limit. What is more, the Agreement provides for ample time off in the form of holidays, vacation and sick time up to 55 days per year, of which employees have used, on average, 43 days per year in the past three years. This amounts to one day off for every five days worked. Long term employees have plenty of vacation time they can draw on and new employees only need 40 hours of compensatory time to get a week of vacation, not the 60 hours requested by the Union.

Findings and Recommendation

The Fact-Finder sees no reason to deny the Union's request and several reasons to grant it. First, its request is modest compared to what employees in the comparison group enjoy. Indeed, in the only county with fewer hours (Dubuque) employees can use earned compensatory time and then re-accumulate to the cap, something Johnson County employees cannot do. Second, since it avoids the payment of overtime, absent employees are not replaced and unused hours are cashed out at the end of the year, it is cost efficient and does not create an ever-increasing liability. Third, the Engineer has the ability to schedule its use to protect the County's standard of service. Finally, the Fact-Finder has no ability to evaluate the County's claim of ample time off without knowing what holidays, vacation and sick time are in comparable

counties. The Fact-Finder recommends the compensatory time cap be increased to sixty (60) hours.

Article 13 - Leaves of Absence (Funeral Leave)

Positions of the Parties

The present provision gives employees a half day paid absence for attending the funeral of a present or retired employee. The Union wants to increase this to one full day. The reason the Union believes this is necessary is because of a dispute regarding the payment of funeral leave when a member of the bargaining unit died after a long battle with cancer. The entire department attended the funeral, acting as honorary pallbearers. The Union states these employees believed they could use sick leave under Section 13.3 of the Agreement¹ to supplement the half day co-worker funeral leave, but the County denied this claim and required them to use vacation time as the supplement. When the entire bargaining unit grieved, the County approved the use of sick time but insisted that in the future vacation or compensatory time would have to be used to supplement co-worker funeral leave. Hard feelings are still festering over this dispute and the Union wants them resolved. Furthermore, funerals in Iowa are typically between 10:00 a.m. and 1:30 p.m. It is difficult for Road Department employees to report to work, drive equipment to a job site, drive back, put their equipment away, clean up and change clothes and get to a morning funeral. Having to report for work again after the reception or luncheon is similarly impractical. A simple way to address these practical and emotional issues at little cost is to increase leave for a present or retired co-worker's funeral.

The County opposes this proposal. It says the present scheme allows employees to choose whether to use sick leave or funeral leave. Employees cannot be in two different pay statuses at once and funerals do not last all day, even when they are followed by a meal. If employees want more time they can use vacation. The Union accepted the grievance settlement

¹ This section state in pertinent part "Sick leave may be used for any of the following: 1) Funeral of a friend; 2) Pallbearer duties...."

including the County's interpretation of the existing language. What is more, the Administrative, SEATS and Sheriff's units all have the same provision as the Secondary Roads Department, as do two other counties in the comparison group. Other comparable counties have either no policy or a permissive provision. The Union's plea should be rejected.

Findings and Recommendation

The Fact-Finder agrees with the Union that the financial impact of its proposal is minimal, in part because the death of a co-worker is a rare occurrence. She also agrees that the working conditions of this unit are apt to make it more difficult for them to return to work after four hours than other county employees who may not have to travel and change clothes. For this reason internal comparisons are not particularly apt. However, the external comparisons (to comparable counties' road departments) show Johnson County's Secondary Road Department already to have as generous a co-worker funeral leave as any (Linn) and more generous than the other four who have either no policy (Black Hawk, Dubuque and Scott) or a permissive one of no stated length (Clinton). Additionally, Secondary Road Department employees are not without recourse should they need or want additional time for they can use vacation or compensatory time. The Fact-Finder recommends no change to this provision at this time.

Article 16 - Wages/Merit Steps/Longevity

Positions of the Parties

The Union seeks a 3.5 percent wage increase effective July 1, 2003; the County offers 3 percent. The Union submits that 3.5 percent is warranted for several reasons. First, since the parties are only 0.5 percent apart, comparability should be the major consideration. It submits that the average percentage increase for January 1, 2003, in the five county comparison group is 3.4 percent. Second, the Union's request is less than the raises received in the most recent two years (3.75 percent on July 1, 2001, and 4 percent on July 1, 2002). Third, the Johnson County Compensation Board has recommended 5 percent increases for elected officials, some of which rank higher in salary than Johnson County's rank of fifth in population. Fourth, 2003 wage

settlements in Iowa have generally been above 3 percent. Fifth, since the CPI-U and CPI-W grew 2.4 percent in 2002, a wage increase higher than 2.4 percent is needed for real income growth. Sixth, this bargaining unit has long enjoyed a favorable wage position compared to neighboring counties. This is no justification for them receiving below average raises. Finally, the County has accepted the Union's 6.5 percent cost-relieving proposal on health insurance. This, too, should be taken into account. The Union concludes that its proposal is the most reasonable when all is taken into account.

The County urges the Fact-Finder to recommend its proposal of 3 percent which it says exceeds the current rate of inflation and is sufficient to maintain these employees' position relative to comparable counties' employees doing similar work. Although the County makes no claim of an inability to finance economic adjustments for its employees, it is nevertheless necessary to make fiscally responsible decisions. The County has a small amount of new money coming in during FY 2004 yet its offer is competitive. It points out that with or without longevity Johnson County's Secondary Road Department employees are well above other counties' units from the Year 2 wage on. With an average longevity of 18.6 years, Johnson County has no hiring or turnover problem needing a wage remedy. The County further points out that both it and the Union have accepted the Fact-Finder's general wage increase recommendation for the Sheriff's Department which was 1.75 percent on July 1, 2003, and another 1.75 percent on January 1, 2004, which it calculates translates to a 2.64 percent cost increase for the year with an additional 0.7 percent deferred to future years. In light of this, the County's offer of 3 percent should be recommended.

Findings and Recommendation

It is undisputed that Johnson County's Secondary Road Department employees enjoy higher wages than their fellows in the comparison group. There is also no dispute that the County can afford to keep them in that relative wage position without sacrificing service. The question then becomes how large a wage increase is needed to do that. The County asks the

Fact-Finder to weigh what the Sheriff's Fact-Finder recommended and both parties accepted. I have accordingly carefully read and considered that Fact-Finder's report and have concluded that I cannot rely on it for two reasons. For one, he made his wage recommendation without insurance having been settled. Indeed, his insurance recommendation was for the status quo whereas here the parties have agreed to a Union proposal that is projected to mitigate the growth in employer insurance costs. Second, it appears from his discussion that he intended to recommend approximately 3.5 percent.² While it is true that mid-way through the year wages in that unit will be 3.53 percent higher than in the previous year, that wage will be earned for only the last six months of the year. The result is that the Sheriff's employees' 1.75 percent + 1.75 percent yields them 2.64 percent for the year, less even than the 2.75 percent offered by the County in those negotiations. For this reason, this Fact-Finder performs her own analysis holding wage increases in the comparison group of other counties' road departments to be of greater relevance than what occurred in Johnson County's Sheriff's Department. The best estimate of the average increase in the external comparison units at the time of the hearing was 3.4 percent. Since two of the five units had not yet settled, this average will no doubt change to some degree, but it is unlikely to drop as low as the 3 percent offered by the County here since every unit with a known wage, tentative agreement or Fact-Finder's recommendation was at least 3.2 percent. Thus, while it is true that the County's proposal would retain these employees' wage leadership position, it would erode their wage relative to employees doing similar work in reasonably comparable counties. There is no reason for allowing that to happen at this time given the County's financial position and the substantial savings that will be generated by the mutual agreement on health insurance. Indeed, the Fact-Finder sees no reason for Johnson County's Secondary Road Department employees to receive a smaller increase than the 3.5

² "It will be noted that this amounts to a little more than a 3.5 percent increase over the one year duration of the contract..." (p. 7)

percent agreed to in two of those five counties, Scott and Dubuque. She therefore recommends the Union's proposal of 3.5 percent.

Article 19 - Grievances (Procedure)

Positions of the Parties

The Union wants to change language regarding compensation of stewards. The present provision, which the County wishes to maintain is as follows:

Investigation or processing of a grievance by employee organization representatives shall be in a manner which does not interfere with normal operations of the department. Permission of the immediate supervisor or County Engineer to investigate or process a grievance during regular working hours must be obtained in advance, and shall not be unreasonably withheld. The employee organization shall have no more than two members investigating or processing a single grievance. Time spent by the employee organization representatives investigating or processing a grievance shall be without pay unless permission to do so is obtained in advance. Investigation or processing of a grievance on county time shall be done with reasonable speed.

The Union proposes to change the fourth sentence to read, "Time spent by a Union steward investigating or processing a grievance shall be with pay, if done during regular working hours." Its rationale for this proposal is that a steward was once forced to use vacation time when he had to attend a grievance meeting during the work day. The Union wants to make certain this does not happen again. The County controls the scheduling of grievance meetings and can set them outside working hours if it so chooses. When scheduled during working hours management is in pay status, the grievant is in pay status, but the steward, who in some situations has the legal right to attend, is not. This has a chilling effect on employees enforcing their rights through the grievance procedure. The bargaining unit does not file many grievances so no abuse will occur, asserts the Union.

The County submits that the Union's request is unreasonable. It cannot tolerate stewards running all over the county without the supervisor knowing where they are. The present provision calls for stewards to be paid if they get permission in advance and also provides that such permission shall not be unreasonably withheld. Stewards are automatically paid for attending meetings during working hours. The existing language is working and the Union has

not proven otherwise because the steward in the case cited by the Union simply did not know what his rights were. Finally, the County argues that comparisons with similarly situated counties and with other County bargaining units do not support the Union's position.

Findings and Recommendation

The Fact-Finder is somewhat perplexed by the Union's request. What the Union says is the intent of its proposal is something the County says it already has, automatic payment for stewards attending grievance meetings during working hours. Even for investigations all the steward need to do is request permission in advance. If his supervisor refuses, the steward has access to the grievance procedure. At most, there has been only one incident in which the steward may have used vacation time for a grievance meeting and that may have been because the steward was uncertain of his rights. In any case, since the evidence presented at the hearing was equipoise the Union did not meet its burden to show the need for change. The Fact-Finder accordingly recommends current language.

IV. SUMMARY OF RECOMMENDATIONS

<u>Item</u>	<u>Recommendation</u>
Job Posting	Current language
Working Hours	Increase compensatory time to 60 hours
Leaves of Absence	Current language
Wages	3.5 percent effective July 1, 2003
Grievances	Current language

Respectfully submitted,



Anna DuVal Smith, Ph.D.
Fact-Finder

Cuyahoga County, Ohio
April 4, 2003

CERTIFICATE OF SERVICE

I certify that on the 4th day of April 2003, I served the foregoing Report of Fact-Finder upon each of the parties to this matter by mailing a copy to them at their respective addresses as shown below:

Joe Rasmussen, Business Representative
PPME Local 2003
P. O. Box 69
Alburnett, IA 52202

Judith Perkins
Labor/Employee Relations Consultant
1321 Coll Drive
Iowa City, IA 52246-4111

I further certify that on the 4th day of April 2003, I submitted this Report for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.



Anna DuVal Smith, Ph.D.
Fact-Finder

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